

**ANNUAL REPORT
OF THE INDIANA
COMMISSION ON MENTAL
RETARDATION AND
DEVELOPMENTAL DISABILITIES**



**Indiana Legislative Services Agency
200 W. Washington Street, Suite 301
Indianapolis, Indiana 46204**

November, 2000

INDIANA LEGISLATIVE COUNCIL

2000

Speaker John Gregg

Chairman

Sandborn

Senator Robert Garton

Vice-Chairman

Columbus

Representative Paul Mannweiler

Indianapolis

Senator Richard Young

Milltown

Representative Mark Kruzan

Bloomington

Senator Harold Wheeler

Larwill

Representative Dale Grubb

Covington

Senator Joseph Harrison

Attica

Representative William Cochran

New Albany

Senator Patricia Miller

Indianapolis

Representative Charlie Brown

Gary

Senator Thomas Wyss

Fort Wayne

Representative Jeffrey Linder

Waldron

Senator James Lewis

Charlestown

Representative Richard Mangus

Lakeville

Senator Earline Rogers

Gary

Philip J. Sachtleben
Executive Director
Legislative Services Agency

INDIANA COMMISSION ON MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

Membership Roster

Representatives

Sheila Klinker, Chairperson
Lafayette

Robert Alderman
Fort Wayne

Senators

Marvin Riegsecker
Goshen

Rose Ann Antich
Merrillville

Lay Members

Christopher Durcholz
Brazil

Sally Lowery
Terre Haute

Joanne Rains
New Castle

Betty Williams
Richmond

Sylvia Marie Brantley
Unionville

Suda Hopkins
Gary

Ervin Picha
Indianapolis

Thomas Van Meter
Larwill

Staff

Carrie S. Cloud
Attorney for the Commission

Kathy Norris
Fiscal Analyst for the Commission

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.state.in.us/legislative/>.

I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES

The Indiana Commission on Mental Retardation and Developmental Disabilities (MRDD) was established by P.L. 78-1994 to do the following: (1) develop a long-range plan for community-based services for the developmentally disabled; and (2) review, make recommendations, and monitor changes regarding services to the mentally retarded and developmentally disabled population. P.L. 245-1997 amended the original legislation, extending the life of the Commission to January 1, 2001.

P.L. 272-1999 further extended the life of the Commission to January 1, 2005, and added the following responsibilities: (1) review and make recommendations regarding the implementation of the comprehensive plan prepared by the Developmental Disabilities Task Force (created by P.L. 245-1997, SEC. 1 and also called the "317 Task Force"); and (2) review and make recommendations regarding the development by the Division of Disability, Aging, and Rehabilitative Services of a statewide plan to address quality assurance in community-based services.

In Legislative Council Resolution 00-1, the Legislative Council assigned the following additional responsibilities to the Commission: (1) study issues relating to the Infants and Toddlers with Disabilities Program (i.e., "First Steps"); and (2) study and make recommendations concerning the issue of requiring all persons who work with developmentally disabled individuals to undergo criminal history checks.

II. INTRODUCTION AND REASONS FOR STUDY

The creation of the MRDD Commission in P.L. 78-1994 was a response to the need for long-range planning and the determination of needs of people with developmental disabilities.

III. SUMMARY OF WORK PROGRAM

The Commission met four times during the 2000 interim.

The first meeting of the Commission was held at the State House on July 25, 2000. Discussion topics at the meeting included: (1) organizational matters; (2) First Steps program; (3) criminal history checks for direct care staff; and (4) update on the operation of the Family and Social Services Administration, including the Muscatatuck and Fort Wayne State Developmental Centers.

The second meeting of the Commission was held at the State House on August 29, 2000. Discussion topics at the meeting included: (1) history and future of the Division of Disability, Aging, and Rehabilitative Services; (2) criminal history checks for direct care staff; (3) update on the operation of the Family and Social Services Administration; and (4) First Steps.

The third meeting of the Commission was held at the State House on October 3, 2000. Discussion topics at the meeting included: (1) study of developmentally disabled offenders committed to the Department of Correction; (2) First Steps; (3) criminal history checks for direct care staff; (4) group homes; (5) wage parity for individuals who provide services to the

developmentally disabled in community-based settings; and (6) possible legislation.

The fourth meeting of the Commission was held at the State House on October 30, 2000. Discussion topics at the meeting included: (1) implementation of the 317 Task Force Plan; (2) proposed legislation; and (3) approval of the final report.

IV. SUMMARY OF TESTIMONY

Infants and Toddlers with Disabilities Program ("First Steps")

Testimony discussed the history, organization, and requirements of the First Steps program. The program provides early intervention services to infants and toddlers with disabilities. Services are provided at no cost. Federal funds were initially available for infrastructure and program development, but the program is now entirely state funded. Federal law allows for cost sharing (e.g., a sliding fee scale), but Indiana does not currently utilize this option. Expenditures for the program have increased from \$24 million to \$44 million since fiscal year 1998. A funding shortfall of \$5.4 million is expected for FY 2001, \$9.4 million for FY 2002, and \$13.5 million for FY 2003. FSSA expects to be able to cover these shortfalls through use of other agency funds.

A great deal of testimony and discussion concerned whether First Steps providers should be required to be accredited. Persons in favor of accreditation stressed that accreditation is a good step toward assuring quality of the services delivered and would also help to level the playing field, as persons who provide vocational rehabilitation services to adults are already required by state law to be accredited. Opposition to accreditation noted that the cost of accreditation might force some providers out of the program, thereby decreasing the services available. Accreditation opponents also stated that the current training system used by First Steps is very comprehensive and accreditation would not add to the quality of services provided but would merely be another paperwork requirement for providers.

The Commission noted that the quality of services provided through First Steps is a very important issue and that the concerns of all parties involved should be considered in developing a system of quality assurance.

Criminal History Checks for Direct Care Staff

Testimony reviewed the history of SB 370-2000 which would have required, among other things, that all direct care staff in state developmental centers and community settings be subject to criminal history checks and that a registry of direct care staff be created similar to the nurse aide registry for nursing homes. Concerns addressed regarding this issue included the following: (1) due process rights of direct care staff; (2) inclusion of case managers as well as direct care staff; (3) duplication of requirements for certain intermediate care facilities for the mentally retarded (ICF/MR) that are also subject to regulation as nursing homes; and (4) protection of developmentally disabled individuals from persons who have a history of abuse that has not resulted in a criminal conviction.

Operation of Family and Social Services Administration

The Commission heard from past and present officials of FSSA regarding the history and future of the agency. Officials acknowledged that currently there are probably not enough service providers to serve all individuals who are transitioned from state developmental centers to community settings. Officials also informed the Commission that FSSA plans to review the waiver process, including the waiting list procedures, to determine if there is any streamlining that can be done.

Commission members commented that any changes made by FSSA should include input from all stakeholders and should continue to be guided by the person-centered planning principle recommended by the 317 Task Force.

State Developmental Centers

Testimony discussed the positive changes that have occurred at both Muscatatuck State Developmental Center (MSDC) and Fort Wayne State Developmental Center (FWSDC) since the Commission's visits to those facilities last summer. The recertification of MSDC for federal Medicaid reimbursement is progressing and the center is expected to be fully recertified within a year. A goal of not using restraints except to protect resident or staff safety has been met. At FWSDC, there has been a decrease in the use of psychotropic drugs and reports of resident injuries. The number of residents at both facilities continues to decrease as residents are relocated to settings in the community where they have more independence. Both facilities continue to experience difficulty in recruiting staff, particularly in clinical positions.

Issues identified that need to be addressed are: (1) the need for a forensic unit; (2) short-term treatment of individuals with developmental disabilities whose needs do not require the level of care available at a state developmental center; and (3) attracting quality employees, especially in clinical positions.

Group Homes

Officials from the Indiana State Department of Health (ISDH) informed the Commission that ISDH is responsible for enforcing federal regulations regarding group homes. One of the regulations that often causes concern is the regulation that a group home must be decertified for Medicaid reimbursement if a resident of the group home is found not to need the level of active treatment the group home setting is designed to provide. The result of decertification is that a group home resident is required to relocate to another setting, often with only 90 days notice.

Commission members expressed concern with the lack of flexibility in the federal regulations concerning group homes and the apparent lack of understanding of the program's purpose by group home residents and their families. Commission members suggested that FSSA designate a staff member to oversee the relocation of group home residents and determine if there is a resident of a state developmental center who can be moved into the group home once the group home resident is relocated.

Developmentally Disabled Individuals and the Criminal Justice System

Officials from the Department of Correction (DOC) and FSSA presented the Commission with results of a study conducted pursuant to P.L. 74-2000 (SEA 175-2000). Out of slightly fewer than 6,000 individuals evaluated upon intake into DOC, 20 were identified as having developmental disabilities. DOC and FSSA suggested that the Commission endorse legislation to conduct an additional, more comprehensive study of the Indiana criminal justice system and its treatment of developmentally disabled individuals.

Commission members commented that if mandatory testing of all inmates is implemented, inmates should be offered an incentive for participating instead of punishment for not participating. The Commission also acknowledged that a comprehensive, state-wide study is appropriate before developing a program similar to the New Jersey Developmentally Disabled Offenders Program. The Commission noted that there appears to be a need for a change in how the criminal justice system deals with individuals who are developmentally disabled or mentally ill.

Wage Parity for Care Givers in Community Settings

Testimony was presented to the Commission comparing the hourly wages earned by individuals who provide services to the developmentally disabled in community settings and those earned by state developmental center employees. Testimony and Commission discussion acknowledged the critical role that wages and benefits play in attracting and retaining quality care givers and expressed concern over the fact that without some increase in compensation of care givers, access to services for individuals with developmental disabilities might be adversely affected.

V. COMMITTEE FINDINGS AND RECOMMENDATIONS

The Commission made the following findings of fact: None.

The Commission made the following recommendations:

The Commission approved PD 3463 by a vote of 7-0. This draft prohibits a person who provides services under a program under the authority of DDARS from employing an individual with a documented history of sexually inappropriate behavior.

The Commission approved PD 3380 by a vote of 7-0. This draft requires the Commission to annually review the First Steps program.

The Commission approved PD 3339 by a vote of 7-0. This draft requires FSSA to establish an emergency response program to assist individuals with both developmental disabilities and mental illness who are in crisis situations and appropriates \$1,000,000 for the 2001-2003 biennium to implement this program.

The Commission approved PD 3443 by a vote of 7-0. This draft makes changes to the membership and meeting procedures of the community residential facilities council and requires council approval of an entity providing supported living services.

The Commission approved PD 3445 by a vote of 7-0. This draft requires FSSA to choose nine counties to develop a pilot program to recruit and train volunteers to serve as advocates for individuals with developmental disabilities who: (1) are involved in, or at risk of becoming involved in, the Indiana criminal justice system as suspects or defendants; or (2) are otherwise endangered and have no parent or legal guardian.

The Commission approved PD 3542 by a vote of 7-0. This draft requires FSSA to increase the rates paid for certain services provided to developmentally disabled individuals.

The Commission approved PD 3551 by a vote of 7-0. This draft requires the establishment of a registry of direct care staff and requires a criminal history check for direct care staff.

WITNESS LIST

- Denise Arland, Chairperson, Interagency Coordinating Council
- Jacqueline Bouyea, Acting Superintendent, Muscatatuck State Developmental Center
- Alex Braitman, Interim Director, Division of Disability, Aging, and Rehabilitative Services, Family and Social Services Administration
- Bob Brown, American Federation of State, County, and Municipal Employees
- Gerald Coleman, Assistant Commissioner, Health Care Regulatory Services, Indiana State Department of Health
- Rose Damron, parent of a daughter with disabilities
- John Dickerson, Executive Director, The ARC of Indiana
- Kim Dodson, Director of Governmental Relations and Development, The ARC of Indiana
- Melissa Durr, Executive Director, Indiana Association of Area Agencies on Aging
- Maureen Greer, Assistant Deputy Director, Child Development, Division of Family and Children, Family and Social Services Administration
- Marge Gurnik, Director of Policy and Budget, Family and Social Services Administration
- John Hill, Former Deputy Director, Division of Disability, Aging, and Rehabilitative Services, Family and Social Services Administration
- James Hmurovich, Director, Division of Family and Children, Family and Social Services Administration
- Sue Hornstein, Director, Long Term Care, Indiana State Department of Health
- Katie Humphreys, Secretary, Family and Social Services Administration
- Kirsten Johnson, Indiana Speech, Language and Hearing Association
- State Senator Connie Lawson, District 24
- Bobbi Leaird, Service Coordinator, Hillcroft Services (Muncie)
- Kathy Lisby, Director, Planning Division, Department of Correction
- Karen Luehmann, Chair, Indiana Commission on Rehabilitation Services
- Carla MacDonald, Early Intervention Administrator, Pathfinder (Huntington)
- David Mank, Indiana Institute on Disability and Community, Indiana University, Bloomington
- Marissa Manlove, Director of External Relations, Noble of Indiana
- Costa Miller, Executive Director, Indiana Association for Rehabilitation

Facilities

- Tracy Mitchell, Bradley and Associates
- Dan Mohnke, Director, Division of Disability, Aging, and Rehabilitative Services, Family and Social Services Administration
- Dr. Ajit Mukherjee, Superintendent, Fort Wayne State Developmental Center
- Marti Nelson, Regional Director, Anthony Wayne Services (South Bend)
- Sarah O'Brien, parent of First Steps child
- Robert Ohlemiller, Deputy Commissioner, Programs and Community Services, Department of Correction
- Susan Preble, Legislative Liaison, Family and Social Services Administration
- Mark Sherrer, General Counsel, Indiana Health Care Association
- Dale Turner, President, Marion County First Steps Council, Inc.
- Stephan A. Viehweg, Associate Director for Administration, Riley Child Development Center
- Melissa Wingate, physical therapist